

INTERNAL MANAGEMENT POLICY & PROCEDURES

STATEMENT OF ANNUAL REVIEW

IMPP # 14-144

Title: PAROLE SERVICES: Waiver of Final Revocation Hearing

The above referenced Internal Management Policy and Procedure (IMPP), issued effective 12-07-03, was reviewed during December 2004 by the KDOC Policy Review Panel per IMPP 01-101. At the time of this annual review, the Policy Review Panel determined that: no substantive changes and/or modifications to this IMPP are necessary at this time and the IMPP shall remain in effect as issued on the above stated date.

The next scheduled review for this IMPP is December 2005.

This statement of annual review shall be placed in front of the referenced IMPP in all manuals.

Keven Pellant, Deputy Secretary of
Community and Field Services
Policy Review Committee Chairperson

Date

Roger Werholtz, Secretary of Corrections

01-04-05
Date

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IMPP # 14-144

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Robert Sanders, Deputy Secretary of
Community and Field Services
Policy Review Committee Chairperson

Date

Roger Werholtz, Secretary of Corrections

01-05-04
Date

KANSAS DEPARTMENT OF CORRECTIONS

	INTERNAL MANAGEMENT POLICY AND PROCEDURE	SECTION NUMBER 14-144	PAGE NUMBER 1 of 7
		SUBJECT: PAROLE SERVICES: Waiver of Final Revocation Hearing	
Approved By: Secretary of Corrections		Original Date Issued:	07-01-99
		Current Amendment Effective:	12-07-03
		Replaces Amendment Issued:	02-07-00

POLICY

Upon establishment of probable cause for the revocation of post-release supervision status, certain offenders serving determinate sentences shall be afforded the opportunity to waive their final revocation hearing before the Kansas Parole Board (KPB). All offenders serving an indeterminate sentence shall be docketed and scheduled for a hearing before the KPB.

DEFINITIONS

Detainer: A warrant, teletype, or written correspondence from a law enforcement or correctional agency citing a misdemeanor or felony charge or conviction in that jurisdiction that results from criminal activity that occurred during a period of post release supervision on the current sentence.

Kansas Parole Board (KPB) Staff: Kansas Department of Corrections staff assigned to administrative and clerical duties in the office of the Kansas Parole Board.

Off Grid Sentence: A sentence for which the term of imprisonment shall be life.

Post-release supervision: Refers only to the supervision of offenders released as the result of Sentencing Guidelines.

Pending Misdemeanor Charge: A misdemeanor charge shall be considered to be pending if an offender has been issued a citation or summons or is arrested for a Class A, B, or C misdemeanor or the equivalent class under city ordinance for an offense that occurred during a period of post release supervision on the current sentence. A charge shall be considered to be "pending" unless resolved by dismissal, acquittal, or conviction. Offenses not equivalent to a Class A, B, or C misdemeanor shall not constitute a pending misdemeanor charge.

Pending Felony Charge: A felony charge shall be considered to be pending if an offender is arrested on a felony charge that occurred during a period of post release supervision on the current sentence. Should formal criminal charges not be filed by the County or District Attorney within 10 days of the offender's arrest on the new felony charge, then charges shall no longer be considered to be pending and the offender shall become eligible for the revocation waiver.

Probable cause: A set of facts and circumstances which would induce a reasonable person to believe that an offender had committed a specific violation; reasonable grounds to make or believe an accusation.

Probation Violation Charge: For purposes of this IMPP, a charge lodged against an offender with a probation case, who has allegedly violated the terms of that probation. A probation violation does not constitute a pending misdemeanor or felony charge. An offender with a pending probation violation charge is eligible for the revocation waiver.

Revocation hearing: A hearing before the revoking authority to determine whether revocation of parole or post release supervision should be made final.

Waiver: An intentional relinquishment of some right or interest. The relinquishment must be free of any force or coercion and should be in the form of a written statement.

PROCEDURES

I. Eligibility and Penalty Periods

- A. Offenders serving a determinate sentence shall be eligible to waive their final hearing before the KPB if at the time of presentation of the waiver form they:
 - 1. Are not convicted of a new felony or misdemeanor offense that occurred during a period of post release supervision associated with the current sentence;
 - 2. Do not have pending misdemeanor or felony charges or other detainers that occurred during a period of post release supervision associated with the current sentence; and,
 - 3. Are in custody in a KDOC facility or Kansas jail or detention center.
- B. Offenders ineligible for the revocation waiver due to the existence of pending misdemeanor or felony charges or detainers at the time of the presentation of the Statement of Charges/Notice of Hearing, or at the finding of probable cause by the hearing officer, shall become eligible and shall be presented with a revocation waiver form by the parole officer, if the offender remains in the county jail, or by the Institutional Parole Officer after admission to a KDOC facility if;
 - 1. The misdemeanor charges resulted in dismissal or acquittal; or
 - 2. Felony charges were not filed within a 10 day time frame by the County or District Attorney, or were dismissed prior to the return of the offender to KDOC custody; and
 - 3. The offender would otherwise be eligible for the waiver had charges not been present;
- C. The penalty period shall commence upon the date the criminal charge or pending detainer was dismissed or acquittal finding reached.
 - 1. If an offender is detained on the basis of a felony arrest for which no formal charges are filed within a 10 day time frame, the penalty period of incarceration shall begin on the date the revocation waiver is signed by the offender or an earlier date determined by the board, which shall not precede the date on which that felony arrest warrant was issued.
- D. Offenders serving any indeterminate or off grid sentence will not be allowed to waive their final revocation hearing before the KPB. This does not preclude the offenders from refusing to attend the hearing, however, these offenders will be docketed and scheduled for a hearing before the Kansas Parole Board.

II. Presentation of the Waiver of Final Revocation Hearing Form

- A. Eligible offenders who have been served with a Statement of Charges/Notice of Hearing, as outlined in IMPP 14-142, and waive the preliminary hearing shall be presented with the Waiver of Final Revocation Hearing Form (Attachment A, Form #14-144-001). This form shall be read to the offender and the offender shall be advised that if he/she decides to waive the final hearing before the KPB, he/she will be:
 - 1. Admitting guilt on all charges outlined in the Statement of Charges/Notice of Hearing;
 - 2. Waiving the right to appear before the KPB and speak on his/her behalf;
 - 3. Waiving the right to present evidence to the KPB;
 - 4. Waiving the right to present witnesses who can give relevant information;
 - 5. Waiving the right to confront and cross-examine adverse witnesses; and
 - 6. Waiving legal counsel.
- B. Eligible offenders, who have been served with a Statement of Charges/Notice of Hearing as outlined in IMPP 14-142, who request a preliminary hearing, shall be presented with the Waiver of Final Revocation Hearing Form if probable cause is established at the preliminary hearing. The presentation and explanation of the waiver form shall be conducted as outlined above in Section II., Subsection A.
 - 1. If a preliminary hearing is conducted and probable cause is not found in all charges outlined in the Statement of Charges/Notice of Hearing, then a notation shall be made at the bottom of the Waiver of Final Revocation Hearing Form indicating those charges for which probable cause was not established.
- C. In order for the Final Revocation Hearing to be considered as "waived", the offender shall have initialed each box in the revocation waiver section and shall have signed and dated the form.
 - 1. The parole officer serving the Waiver of Final Revocation Hearing Form shall witness the signing of the form and verify that the correct date is noted on the form.
- D. Within 3 working days of the signing of the waiver form, the parole officer or designee shall enter the "RW" OMIS movement reflecting the date of the offender's decision to waive his/her final hearing.
- E. An offender wishing to have a Final Revocation Hearing shall initial the statements in the appropriate box on the form and shall sign and date the form.
 - a. The parole officer serving the Waiver of Final Revocation Hearing Form shall witness the signing of the form by signature, and verify that the correct date is noted on the form.
- F. If the offender refuses to accept or sign the Waiver of Final Revocation Hearing Form, the offender shall be considered to have requested a final hearing before the Kansas Parole Board
 - a. If the offender refuses to sign the revocation waiver form, the parole officer shall note that the offender "refused to sign", and indicate the date at the bottom of the form.

- G. The offender shall be provided a signed copy of the Waiver of Final Revocation Hearing Form.
- H. Offenders initially refusing to waive the final revocation hearing shall not subsequently be permitted to waive their final revocation hearing

III. Revocation Packet Submission for Offenders Who Waive Final Hearing

- A. For eligible offenders who have waived the final hearing before the KPB, a modified revocation packet shall be forwarded to the KPB staff within three (3) working days of the waiver date. This modified packet shall include:
 - 1. The violation report and any supplemental reports;
 - 2. The Statement of Charges/Notice of Preliminary Hearing (2 copies);
 - 3. Any documentation regarding the dismissal or acquittal of criminal charges;
 - 4. The Closing Summary (2 copies);
 - 5. The Summary of Preliminary Hearing (if applicable); and
 - 6. The Waiver of Final Revocation Hearing Form (2 copies).
- B. KPB support staff shall forward the modified packet along with the central office file to the Parole Board so that a final decision may be made by the KPB regarding the offender's case.
 - 1. The offender's Final Action Notice shall include the date of the final revocation hearing.

IV. Interstate Cases/Kansas Cases Arrested and Detained Outside of Kansas

- A. Upon return to a Kansas Correctional facility, offenders who meet the criteria in Section I., Subsection A., shall be offered the opportunity to waive their final hearing before the Kansas Parole Board.
- B. The POII, Interstate Compact, shall:
 - 1. Determine which interstate cases will meet the criteria for eligibility as outlined in Section I.;
 - 2. Track the eligible offenders until they have been returned to a KDOC facility;
 - 3. Upon the offender's return, fax a copy of the Statement of Charges/Notice of Hearing, the Final Notice of Hearing, and a copy of the violation report(s) to the Institutional Parole Officer (IPO) or designee, of the facility in which the offender is housed; and
 - 4. Forward the revocation packet to the KPB staff within three (3) working days.
- C. The Institutional Parole Officer (IPO) or designee shall:
 - 1. Serve the offender with the final notice of hearing within three (3) working days of receipt of the final notice of hearing;

2. Present the waiver form to the offender as outlined in Section II., Subsection A.;
 3. Complete the appropriate OMIS movement within three (3) calendar days of the signing of the waiver form and;
 4. Provide a signed copy of the waiver form to the offender.
- D. If the offender waives the final hearing, the IPO or designee shall fax a copy of the waiver to the KPB staff and the waiver shall become part of the revocation packet.
- E. Revocation packets on offenders who are not eligible to waive the final hearing or who request a hearing before the KPB shall be processed in accordance to IMPP 14-141.

V. Procedure to Rescind Waiver of Hearing

- A. Offenders may not rescind a written waiver of final revocation hearing before the Parole Board unless:
1. The offender petitions the KPB in writing within 14 calendar days from the allegedly defective waiver was signed; and
 2. The offender proves to the satisfaction of the KPB that the waiver decision was the product of fraud, duress, or that the offender was not advised of the fact of admission of guilt of the charged condition violations or the rights that he/she would forego by agreeing to the waiver of the final revocation hearing.
- B. In the event that the KPB grants the offender's petition, the offender shall be scheduled for a final revocation hearing.
1. In such cases, if the KPB revokes the offender's post-release supervision and orders the offender to serve an incarceration penalty period, such penalty shall commence on the date of revocation.

VI. Offenders Who: Are Erroneously Allowed to Waive Final Hearing; or, Incur a New Criminal Charge Subsequent to Issuance of the Waiver.

- A. When an offender with a determinate sentence has waived the final revocation hearing and it is later discovered he/she has incurred a misdemeanor or felony conviction, the following actions shall take place:
1. If the conviction is discovered while the offender is still in the county jail, the parole officer shall present an amended Statement of Charges/Notice of Revocation Hearing to the offender.
 2. If the conviction is discovered after the offender has been admitted to a KDOC facility, the Institutional Parole Officer shall present an amended Statement of Charges/Notice of Revocation Hearing to the offender and the offender shall be docketed for a hearing before the Kansas Parole Board.
 3. If it is discovered that a misdemeanor or felony charge had been filed prior to the offender having waived the final hearing, or misdemeanor or felony charges are filed after the offender has waived the final hearing, the waiver shall remain in force. A signed waiver of a final hearing will become invalid only if it is discovered that the waiver was presented to an offender with an indeterminate

sentence, the offender had been **convicted** of a misdemeanor or felony prior to the signing of the waiver, or the offender is convicted of a misdemeanor or felony after the signing of the waiver during the revocation penalty period.

- a. Offenders charged with a criminal offense after presentation of the revocation waiver shall be considered to be serving their violation penalty period, and shall not be cited with the additional criminal charge while serving the violation time.
 - (1) If the offender is still in the county jail upon completion of the revocation period, the condition violation warrant shall be withdrawn. It shall be within the discretion of the parole officer and supervisor to issue a subsequent warrant for a previously unaddressed felony criminal charge that occurred during a term of post release supervision.
 - (2) It shall be within the discretion of the parole officer and supervisor to issue a warrant for an offender who has waived the final revocation hearing, has been returned to a KDOC facility, and is subsequently released to the detainer for a felony criminal offense that occurred on a period of post release supervision.
 - (3) If the offender is ultimately convicted of a felony that occurred while serving a post release supervision term, the offender shall be returned to prison under the provisions of Sentencing Directive #37.
 - (a) Offenders incurring misdemeanor convictions shall be processed in accordance with the Behavior Response/Adjustment Guide (BRAG).

- B. When facility staff determine that an offender with an indeterminate sentence has erroneously been allowed to waive the final revocation hearing, the offender will be scheduled for a final hearing before the Kansas Parole Board.

VII. Administrative Actions for Offenders Serving the Violation Penalty Period in the County Jail

- A. When circumstances exist in which the offender will not be transported to a KDOC facility prior to the date of completion of his/her violation penalty period:
 - 1. The final action notice and post release certificates shall be requested from the Kansas Parole Board Administrator, and forwarded to the parole officer and/or parole supervisor of record;
 - 2. The parole officer of record shall consult with the Central Office Sentence Computation Unit staff to ensure that the offender's sentence has been accurately computed and good time entries made;
 - 3. The parole officer of record shall ensure that the KDOC warrant/hold is removed from the local detention facility and the proper OMIS/TOADS entries are made when the offender's violation time is completed; and
 - 4. The parole officer of record shall ensure that the offender is provided with the release certificate and reporting instructions, if applicable.

VIII. Transmission Of Information To Facility Staff

- A. Information regarding the disposition of misdemeanor or felony charges affecting presentation of the revocation waiver shall be placed in the Contact Notes, Transportation Memo, and Closing Summary contained in the TOADS database.

NOTE: The policy and procedures set forth herein are intended to establish directives and guidelines for staff and offenders and those entities who are contractually bound to adhere to them. They are not intended to establish State created liberty interests for employees or offenders, or an independent duty owed by the Department of Corrections to either employees, offenders, or third parties. This policy and procedure is not intended to establish or create new constitutional rights or to enlarge or expand upon existing constitutional rights or duties.

REPORTS REQUIRED

None.

REFERENCES

KSA 22-3717, 22-4101, 75-5217, 1999 Supp.
KAR 44-9-4, 44-9-105 45-9-3, 45-9-4
IMPP 14-134, 14-141, 14-142, 14-143

ATTACHMENTS

Attachment A – Waiver of Final Revocation Hearing Form, 1 page

Kansas Department of Corrections
WAIVER OF FINAL REVOCATION HEARING

I have read or had read to me the Charges outlined in my Statement of Charges and/or Final Notice of Hearing and understand my rights and the charges against me. Receipt of one copy of this Waiver Decision form is hereby acknowledged.

- | |
|--|
| <p>() I wish to have a final revocation hearing before the KPB.</p> <p>() I understand that once I have requested my final hearing, I will not have the opportunity to waive my final hearing again.</p> <p>() I understand that if my release is revoked, my violation time will not begin until the date of my final revocation hearing before the Board.</p> |
| <p>() I wish to WAIVE my final hearing before the Kansas Parole Board and:</p> <p>() I plead guilty to the violations against me as outlined in my Statement of Charges and/or Final Notice of Hearing.</p> <p>I understand that in waiving this hearing:</p> <p>() I forfeit the right to appear before the KPB and speak on my behalf, and</p> <p>() I forfeit the right to present evidence to the KPB on my behalf, and</p> <p>() I forfeit the right to present witnesses who can give relevant information, and</p> <p>() I forfeit the right to confront and cross-examine adverse witnesses, and</p> <p>() I forfeit any right I may have regarding legal counsel.</p> <p>() I understand that once I have waived my final hearing, I will not have the opportunity to request a final hearing again. Requests to rescind the waiver of the final revocation hearing must be submitted in writing to the Kansas Parole Board within 14 days of waiver execution. In order to be considered by the Board, information must be included indicating that the decision was the product of fraud, duress, or that the offender was not advised of the fact of admission of guilt of the charged condition violations or the rights that he/she would forego by agreeing to the waiver of the final revocation hearing.</p> |

Offender Name and KDOC Number - Printed

Signature of Offender and KDOC Number

Date of Decision

Witness

Date

For offenders who had a preliminary hearing who subsequently waived the final revocation hearing as indicated by the completion of the above waiver (to be completed by the preliminary hearing officer):

- () Probable cause was found for all charges as outlined in the Statement of Charges/Notice of Hearing.
- () Probable cause was found for all charges as outlined in the Statement of Charges/Notice of Hearing except for the charges listed below:

Distribution: 1-IPO 1-Offender 1-Central Office File (KPB) 1-Facility Master File